IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5039 of 2006
Date of decision: 07.9.2006

Hardeep Singh and others

....Petitioners

versus

Chandigarh Administration and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. KS Dadwal, Advocate, for the petitioners.

Mr. Rajiv Atma Ram, Sr.Advocate
with Mr. Puneet Gupta, Advocate for respondent Nos.1 to 3.
Mr. Mohan Jain, Advocate for respondent No.4.

JUDGMENT:

This writ petition has been filed for quashing license given to respondent No.4 for opening of IMFL/Country Liquor Vend alongwith 'Ahata' (place for drinking) in the market of Sector 15-C, Chandigarh as shown in the site plan and for restraining respondent Nos. 1 to 3 (official respondents) from allowing the running of the said vend.

2. Case of the petitioners (17 in number) is that they are residents of Sector 15 for the last many years. Respondent Nos. 1 to 3 issued Excise policy for the year 2006-07. Under the Policy, liquor vends are to be located at a reasonable distance of 50 meters from places of worship, public entertainment, educational institutions and 150 meters from National Highway except within municipal limits. A liquor license was allotted at SCF No.4, Sector 15-C inspite of opposition of the residents, which was against Article 47 of the Constitution. The decision to allot liquor license in a crowded area where residential houses exist, was against public interest. Alcohol was dangerous to health and as per studies of WHO, alcohol was responsible for more deaths than tobacco or other drugs. It is also stated that

under Section 35(2) of the Punjab Excise Act,1914,(for short, 'the Act'), ascertainment of public opinion was required before granting license. Relevant provision is as under:-

> "35(2) **Ascertainment of public opinion -**
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> Before any licence is granted in any year for the retail sale of liquor for consumption on any premises which have not been so licensed in the preceding year, the Collector shall take such measure in accordance with rules to be made by the State Government in this behalf, as may best enable him to ascertain local public opinion in regard to the licensing of such premises."

2.1 Reference has also been made to Section 54 of the Act, which is as under:-

> "54. Power to close shops for the sake of public peace – (1) The District Magistrate or Sub Divisional magistrate by notice in writing to the licensee; may require that any shop in which any intoxicant is sold shall be closed at such times or for such period as he may think necessary for the preservation of the public peace.
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> (2) If a riot or unlawful assembly is apprehended or occurs in the vicinity of any such shop (an executive magistrate) of any class may require such shop to be kept closed for such period as he may think necessary;
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> Provided that where any such riot or unlawful assembly occurs the licensee shall, in the absence of, a Magistrate, close his shop without any order.
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> (3) When any Sub Divisional magistrate makes a direction under sub section (1) or (any Executive Magistrate) makes a direction under sub section (2) he shall forthwith inform the collector of his action and

his reasons thereof."

2.2 Grounds raised in the petition are that opening of liquor vend in residential area, near mandir and other educational institutions was contrary to Excise Policy. The main road was only 28 meters from the liquor vend whereas as per policy, it should be 150 meters. The site is surrounded by residential area. The location of the vend is in a shop cum flat having flats in adjacent building where children as well as families are residing and considerations of public peace have not been kept in view.

2.3 Reference to Annexure P.1, excise policy shows that following objectives are mentioned therein :-

> "Directive Principles of the State Policy as spelt out under Article 47 of the Constitution.
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> * Health and Safety concerns. The World Health Organisation's Global Status Report on Alcohol has found that alcohol causes as much death and disability as measles and malaria and causes loss of far more years of life than tobacoo or illegal drugs. (WHO 2001, Management of Substance Dependence, Non Communicable Diseases, "Global Status Report on Alcohol" cited in the Report of Joint Working Group all Model Excise Policy/Taxation/Act/Rules of the Ministry of Food Processing Industries (2005)). Hence the availability of liquor cannot be unfettered. However, at the same time a highly restricted access leads to sale of spurious liquor and endangers human life.
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> * Consumers choice i.e., those who drink responsibly must be able to exercise their preference.
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> *To encourage responsible drinking habits and create an environment where consumption of alcohol is subject to regulation of domestic budget.

*To wean away people from hard liquor to low content alcohol such as wines and beer by making their availability relatively easier.

*Revenue maximization so that resources can be used to finance developmental activities.

In short, the Excise Policy must ensure that the objectives of "minimisation of consumption and maximisation of revenue are achieved without putting unreasonable restrictions on the individual's freedom of choice and unreasonable high taxation. Raising rates beyond the threshold, would lead to evasion of taxes, smuggling and illicit distillation. Therefore, efforts should be to rationalise tax and policy regimes so as to plug leakages and realise full revenue due to the State for genuine and responsible drinking. (Report of Joint working Group all Model Excise Policy/Taxation/Act/Rules of the Ministry of Food Processing Industries (2005) page 6)."

10. **Location of Liquor vends** :- Liquor vends to be located at a reasonable distance (50 meters) from places of worship, public entertainment, education institution and 150 meter from national Highways (except within Municipal Corporation limit)."

2.4 Annexure 'C' to the policy mentions location of the 62 vends which includes Sector 15 market; Site plan, Annexure P.2 shows that the vend is in shop cum flats surrounded by residential area; Annexure P.3 is a newspaper report dated March 27, 2006 mentioning that there were objections to the opening of liquor vend in Sector 15; Annexures P.4 and P.5 are representations of Market Welfare Association, Sector 15, Chandigarh.

3. In the reply filed on behalf of the Administration, it is stated

that no harassment was caused to the petitioners as L-II license was granted for consumption "off the premises"; no objections were received to the draft policy published in newspaper on 20.12.2005; there was no place of worship or of public entertainment or any educational institutions within 50 meters of the site at which the vend is located; representations against opening of vend in Sector 15 were duly considered; site was inspected and representations were filed; there was no violation of Section 35(2) of the Act, which was applicable only for a licence "for consumption on any premises".

4. Learned counsel for the petitioners mainly relied upon Article 47 of the Constitution, which has also been relied upon in the excise policy itself. He also submitted that the petitioners had a right to peaceful environment in a residential area where children and families lived, which was part of right to live under Article 21 of the Constitution. Under the policy itself, it was acknowledged that the alcohol had harmful effects on health and there was need to minimise the consumption of alcohol. Opening of vend in a residential area provided easy access to alcohol and instead of discouraging consumption, consumption of alcohol was encouraged. Even if licence granted was for consumption "off the premises", in practical terms, once liquor was being sold, there was no check on purchasers consuming the same standing outside the shop or while sitting in the cars or at public parks/places within the sight of children and families. A large number of students live in Sector 15, the same being quite close to University and other educational institutions.

4.1 Learned counsel for the petitioners relied upon judgment of the Hon'ble Supreme Court in **Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others,** AIR1981 Supreme Court 746, wherein it was observed:-

> "The right to life enshrined in Art.21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the

> head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about the mixing and commingling with fellow human beings."

Learned counsel for the petitioners also relied upon judgment of the Hon'ble Supreme Court in **Chameli Singh and others v. State of U.P. and another** AIR 1996 Supreme Court 1051 wherein it was observed:-

> "**7.** In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc., so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right.

> As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights."

5. Learned counsel for the State submitted that due precautions have been taken in the policy of maintaining distance from temples, educational institutes, places of public entertainment and that the consumption of liquor could not be "whished away". It was submitted that in absence of prohibition policy, there could be no objection to sale of liquor in a shop cum flat which was in a market place, even if surrounded by residential areas.

5.1 Stand of respondent No.4 licensee is that for many years, liquor vends were being opened in shop cum offices and shop cum flats.

6. The questions for consideration are:-

(i) Whether opening of liquor vend at a place surrounded by residential area amounts to violation of Article 21 or Article 47 of the Constitution of India?

(ii) Whether in the facts and circumstances of the case, grant of licence of a liquor vend is liable to be set aside or discontinued?

6.1 Articles 21 and 47 of the Constitution of India have been subject matter of consideration in several decisions of the Hon'ble Supreme Court. It has been held that there is no fundamental right to do trade or business in intoxicants, such a right being "res extra commercium", the same being inherently harmful.

6.2 Observations in some of the judgments may be noticed.

6.3 In **Synthetics & Chemicals Limited v. State of UP and others,** AIR 1990 SC 1927, Hon'ble Mr. Justice G.L.Oza, in his concurring opinion, observed:-

> **103.** The concept of royal privilege has been derived historically from England as Great Britain continues to be a monarchy with democracy. The Head of the State is the Crown. It was on these bases that what has not been provided for was supposed to be the privilege of the Crown but under Indian Constitution the Head of the State and the three functionaries of the State, the Executive, the Legislature and the Judiciary have their powers defined under the Constitution. There is nothing like privilege vested in any one of the functionaries of the State and in the background of this basic features of our Constitution the doctrine of privilege is difficult to reconcile with, then if we examine this privilege of trading in commodities injurious to health and dangerous to life in the context of Article 21 and Article 27 of our Constitution.
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> Article 21 of the Constitution reads:
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> "21. *Protection of life and personal liberty.*— No person shall be deprived of his life or personal liberty except according to procedure established by law."
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> This article casts a duty on the State to protect the life of

every citizen except as is provided under Article 21. If we compare this duty of the State with the scheme of privilege which means that the State has a privilege to endanger human life (the life of a citizen) such a privilege runs contrary to Article 21. Another significant article of our Constitution is Article 47. It reads as under:

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.— The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

This article appears in the chapter of Directive Principles of State Policy. Inclusion of this article in this chapter clearly goes to show that it is the duty of the State to do what has been enacted in Article 47 and in fact this article starts with the phrase "Duty of the State" and the duty is to improve public health and it is further provided that this duty to improve public health will be discharged by the State by endeavouring to bring about prohibition. It sounds contradictory for a State which is duty bound to protect human life, which is duty bound to improve public health and for that purpose is expected to move towards prohibition claims that it has the privilege of manufacture and sale of alcoholic beverages which are expected to be dangerous to human life and injurious to human health, transferring this privilege of selling this privilege on consideration to earn huge revenue without thinking that this trade in liquor ultimately results in degradation of human life even endangering human life and is nothing but moving contrary to the duty cast

under Articles 21 and 47 and ideal of prohibition enshrined in Article 47. In view of Articles 21 and 47 with all respect to the learned Judges who so far accepted the privilege doctrine it is not possible to accept any privilege of the State having the right to trade in goods obnoxious to health."

In the same judgment, in the leading opinion, it was observed:

"76. Article 47 of the Constitution imposes upon the State the duty to endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and products which are injurious to health....."

6.4 In **Khoday Distilleries Ltd. And others v. State of Karnataka and others,** (1995) 1 SCC 574, after referring to **Balsara'**s case, AIR 1951 SC 318; **Cooverjee's** case, AIR 1954 SC 220; **Kidwai's** case, AIR 1957 SC 414; **Nagendra Nath'**s case, AIR 1958 SC 398; **Amar Chakraborty's** case, AIR 1972 SC 1863 and the **RM DC** case, AIR 1957 SC 699, as interpreted in **Harinarayan Jaiswal's** case, AIR 1972 SC 1816, **Nashirwar's cas**e, AIR 1975 SC 360 and **Har Shankar and others etc. v. The Deputy Excise and Taxation Commissioner and others etc**., AIR 1975 SC 1121, it was concluded in para 60 as under:-

"60.(a), (b) xx xx xx

(c) Potable liquor as a beverage is an intoxicating and depressant drink which is dangerous and injurious to health and is, therefore, an article which is res extra commercium being inherently harmful. A citizen has, therefore, no fundamental right to do trade or business in liquor. Hence the trade or business in liquor can be completely prohibited.

(d) Article 47 of the Constitution considers intoxicating drinks and drugs as injurious to health and impeding the

raising of level of nutrition and the standard of living of the people and improvement of the public health. It, therefore, ordains the State to bring about prohibition of the consumption of intoxicating drinks which obviously include liquor, except for medicinal purposes. Article 47 is one of the directive principles which is fundamental in the governance of the country. The State has, therefore, the power to completely prohibit the manufacture, sale, possession, distribution and consumption of potable liquor as a beverage, both because it is inherently a dangerous article of consumption and also because of the directive principle contained in Article 47, except when it is used and consumed for medicinal purposes."

6.5 In **State of Andhra Pradesh and others v. McDowell and Co. and others** AIR 1996 Supreme Court 1627, it was observed:-

"**41.** The contention that a citizen of this country has a fundamental right to trade in intoxicating liquors refuses to die in spite of the recent Constitution bench decision in Khoday Distilleries (1995 AIR SCW 313). It is raised before us again. In Khoday Distilleries, this Court reviewed the entire case-law on the subject and concluded that a citizen has no fundamental right to trade or business in intoxicating liquors and that trade or business in such liquor can be completely prohibited. It held that because of its vicious and pernicious nature, dealing in intoxicating liquors is considered to be res extra commercium (outside commerce). Article 47 of the Constitution, it pointed out, requires the State to endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and all drugs which are injurious to health."

6.6 In **State of Orissa and others v. Narain Prasad and others**

etc., AIR 1997 SC 1493, referring to the opinion of Hon'ble Mr. Justice G.L.Oza, in **Synthetics's** case (supra), it was observed:-

> "**34.** Mr Sorabjee, the learned counsel for the respondents-licensees then contended that the theory of 'privilege' has been exploded in the decision of this Court in *Synthetics and Chemicals Ltd.* v. *State of U.P., AIR 1990 SC 1927* and can no longer be invoked. In support of his submission, Mr Sorabjee relied upon certain observations in the concurring opinion of G.L. Oza, J. at page 164 of the Report. The learned Judge referred to Article 47 of the Constitution and observed: (SCC p. 164, para 107).
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> "This article appears in the chapter of Directive Principles of State Policy. Inclusion of this article in this chapter clearly goes to show that it is the duty of the State to do what has been enacted in Article 47 and in fact this article starts with the phrase 'Duty of the State' and the duty is to improve public health and it is further provided that this duty to improve public health will be discharged by the State by endeavouring to bring about prohibition. It sounds contradictory for a State which is duty-bound to protect human life, which is duty-bound to improve public health and for that purpose is expected to move towards prohibition claims that it has the privilege of manufacture and sale of alcoholic beverages which are expected to be dangerous to human life and injurious to human health, transferring this privilege of selling this privilege on consideration to earn huge revenue without thinking that this trade in liquor ultimately results in degradation of human life even endangering human life and is nothing but moving contrary to the duty cast under Articles 21 and 47 and ideal of prohibition enshrined in Article 47. In view of Articles 21 and 47 with all respect to the learned Judges who so far accepted the privilege

doctrine it is not possible to accept any privilege of the State having the right to trade in goods obnoxious and injurious to health."

6.7 The observations which may appear to be taking a different view can also be noticed in certain subsequent judgments.

6.8 In **State of Punjab and another v. Devans Modern Breweries Ltd. and another (2004) 11 SCC 26,** in his dissenting opinion, Hon'ble Mr. Justice B.N.Aggarwal observed:-

> **"47.** The decisions of this Court including those rendered by the Constitution Benches strike different notes. They at times stand poles apart. Inconsistencies and contradictions in the said decisions are galore. Some later Constitution Bench decisions although took note of the earlier Constitution Bench decisions, only sought to distinguish the same and did not refer the matter to a larger Bench for consideration of correctness of one view or the other. I may, therefore, proceed on the premise that some of the principles in *Khoday Distilleries Ltd.* v. *State of Karnataka* (1995) 1 SCC 574 are correct, although one may have strong reservations even in this behalf. In *Khoday Distilleries Ltd.* v. *State of Karnataka (supra)* expressly or by necessary implication fundamental right to deal in any goods is accepted. The only exception which was made are those commodities business of which is inherently noxious and pernicious and is condemned by the civilised society. It has sought to lay down the law that there cannot be a business in crime."
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> **48.** Dealing in a commodity which is governed by a statute cannot be said to be inherently noxious and pernicious. A society cannot condemn a business nor there exists a presumption in this behalf if such

business is permitted to be carried out under statutory enactments made by the legislature competent therefor. The legislature being the final arbiter as to the morality or otherwise of the civilised society has also to state as to business in which article(s) would be criminal in nature. The society will have no say in the matter. The society might have a say in the matter which could have been considered in a court of law only under common-law right and not when the rights and obligations flow out of statutes operating in the field. Health, safety and welfare of the general public may again be a matter for the legislature to define and prohibit or regulate by legislative enactments. Regulatory statutes are enacted in conformity with clause (6) of Article 19 of the Constitution to deal with those trades also which are inherently noxious and pernicious in nature; and furthermore, thereby sufficient measures are to be taken in relation to health, safety and welfare of the general public. The courts while interpreting a statute would not take recourse to such interpretation whereby a person can be said to have committed a crime although the same is not a crime in terms of the statutory enactment. Whether dealing in a commodity by a person constitutes a crime or not can only be the subject-matter of a statutory enactment.

51. From the analysis of decisions rendered by this Court in *Cooverjee B. Bharucha*, AIR 1954 SC 220, *R.M.D. Chamarbaugwala*, AIR 1957 SC 699, *Har Shankar, AIR 1975 SC 1121* or *Khoday Distilleries, (1995) 1 SCC 574,* it will appear that a person cannot claim any right to deal in any obnoxious substance on the ground of public morality. The State, therefore, is entitled to completely prohibit any trade or commerce in potable liquor. Such prohibition, however, has not

been imposed. Once a licence is granted to carry on any trade or business, can it be said that a person is committing a crime in carrying on business in liquor although he strictly complies with the terms and conditions of licence and the provisions of the statute operating in the field? If the answer to the said question is to be rendered in the affirmative it will create havoc and lead to anarchy and judicial vagaries. When it is not a crime to carry on such business having regard to the fact that a person has been permitted to do so by the State in compliance with the provisions of the existing laws, indisputably he acquires a right to carry on business. Even in respect to trade in food articles or other essential commodities either complete prohibition or restrictions are imposed in the matter of carrying on any trade or business, except in terms of a licence granted in that behalf by the authorities specified in that behalf. The distinction between a trade or business being carried out legally or illegally having regard to the restrictions imposed by a statute would have, therefore, to be judged by the fact as to whether such business is being carried out in compliance with the provisions of the statute(s) operating in the field or not. In other words, so long it is not made impermissible to carry on such business by reason of a statute, no crime can be said to have been committed in relation thereto. The doctrine of res extra commercium, thus, would not be attracted, whence a person carries on business under a licence granted in terms of the provisions of the regulatory statutes."

Hon'ble Mr. Justice S.B.Sinha, in his dissenting opinion, inter-alia observed:-

"301. Can we shut our eyes to the fact that except the

> State of Gujarat, no other State has imposed a complete prohibition? In fact, the States are encouraging liberalisation to such an extent that in the near future alcohol beverages may be allowed to be sold in small grocery shops. The executive authorities are contemplating to grant permission to open liquor shops at the airports. The society has accepted pub culture in the metros. A view in the matter, therefore, is required to be taken having regard to the changing scenario on the basis of ground reality and not on the basis of the centuries' old maxims.
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> **310.** The judiciary cannot cling to age-old notions of any underlying philosophy behind interpretation. It has to move with the times. As Willes, C.J. once said, "When the nature of things changes, the rules of law must change too." (See *Davies* v. *Powell, 1737 Willes 46,* Willes at p. 51.) This is a truism in that the legislature and, within limits, the courts should change rules to keep the law abreast of change. (See *Dias Jurisprudence*, 5th Edn., p. 147.)"

6.9 We may also notice the observations of the Hon'ble Supreme Court in **State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & Ors.,** 2005(8) SCC 534 on the development of law on justiciability of directive principles. After noticing various decisions of the Hon'ble Supreme Court on the subject, in para 47, it was observed:-

> "**47.** Post *Kesavananda Bharati, (1973) 4 SCC 225,* so far as the determination of the position of directive principles, vis-à-vis fundamental rights are concerned, it has been an era of positivism and creativity. Article 37 of the Constitution while declaring the directive principles to be unenforceable by any court goes on to say, "that they are nevertheless fundamental in the governance of the country". The several clauses of Article 37

> themselves need to be harmoniously construed assigning equal weightage to all of them. The end part of Article 37 — "it shall be the duty of the State to apply these principles in making laws" is not a pariah but a constitutional mandate. The series of decisions which we have referred to hereinabove and the series of decisions which formulate the three stages of development of the relationship between directive principles and fundamental rights undoubtedly hold that, while interpreting the interplay of rights and restrictions, Part III (Fundamental rights) and Part IV (Directive principles) have to be read together. The restriction which can be placed on the rights listed in Article 19(1) are not subject only to Articles 19(2) to 19(6); the provisions contained in the chapter on directive principles of State policy can also be pressed into service and relied on for the purpose of adjudging the reasonability of restrictions placed on the fundamental rights."

6.10 Reference may also be made to latest judgment in **State of Maharashtra and others v. Nagpur Distillers and another** 2006(5) SCC 112, wherein it was observed:-

> ".....Article 47 of the Constitution of India clearly casts a duty on the State at least to reduce the consumption of liquor in the State gradually leading to prohibition itself. It appears to be right to point out that the time has come for the States and the Union Government to seriously think of taking steps to achieve the goal set by Article 47 of the Constitution of India. It is a notorious fact, of which we can take judicial notice, that more and more of the younger generation in this country is getting addicted to liquor. It has not only become a fashion to consume it but it has also become on obsession with very many. Surely, we do not need an indolent nation. Why the State

> in the face of Article 47 of the Constitution of India should encourage, that too practically unrestrictedly, the trade in liquor is something that it is difficult to appreciate. The only excuse for the State for not following the mandate of Article 47 of the Constitution is that huge revenue is generated by this trade and such revenue is being used for meeting the financial needs of the State. What is more relevant here is to notice that the monopoly in the trade is with the State and it is only a privilege that a licensee has in the matter of manufacturing and vending liquor."

7. A reference to the above case-law shows that under Article 47 of the Constitution, the State is to endeavour to bring about prohibition of consumption of intoxicating drinks. Identical duty of the State is also referable to Article 21 of the Constitution for protection of health, which is also part of right to life. As held in **Mirzapur Modi's** case (supra), directive principles have to be read with fundamental rights. Apart from other judgments, in **Nagpur Distillers's** case (supra), duty of the State to take steps to achieve goal under Article 47 of the Constitution has again been highlighted. Even in the policy of the State, which has been reproduced in the earlier part of this judgment, directive principle under Article 47 and health and safety concerns in the light of WHO Global Status report on Alcohol have been noticed. These aspects do not, however, appear to have been fully given effect to while allotting the liquor vend. The liquor vend in the present case appears to be located in the heart of residential area. We find merit in the contention raised on behalf of the petitioners that considerations of public health, public morality, public peace have to be kept in mind while allowing a liquor vend at any particular location and ill-effect of opening and operation of a liquor vend in a residential area is required to be kept in mind. However, we do not find it practicable at this stage to carry the matter to the logical end, having regard to lack of availability of authentic factual data. The vend has already been in operation for the last more than five months.

8. We, are thus, unable to record a finding in the present case that

Articles 21 and 47 stand violated and the allotment of liquor vend is liable to be set aside. At the same time, having upheld the concern of the petitioners and expressed the desirability and obligation of the State to give effect to Article 47 of the Constitution, we direct the authorities to suitability redress the grievance of the petitioners by regulating the running of the liquor vend and to review the matter more seriously for allotment of any such vends in future, in the light of spirit of Articles 21 and 47 of the Constitution of India and the principles laid down by the Hon'ble Supreme Court.

9. The writ petition stands disposed of accordingly.

(Adarsh Kumar Goel)
Judge

September 07, 2006 (Rajesh Bindal)
'gs' Judge